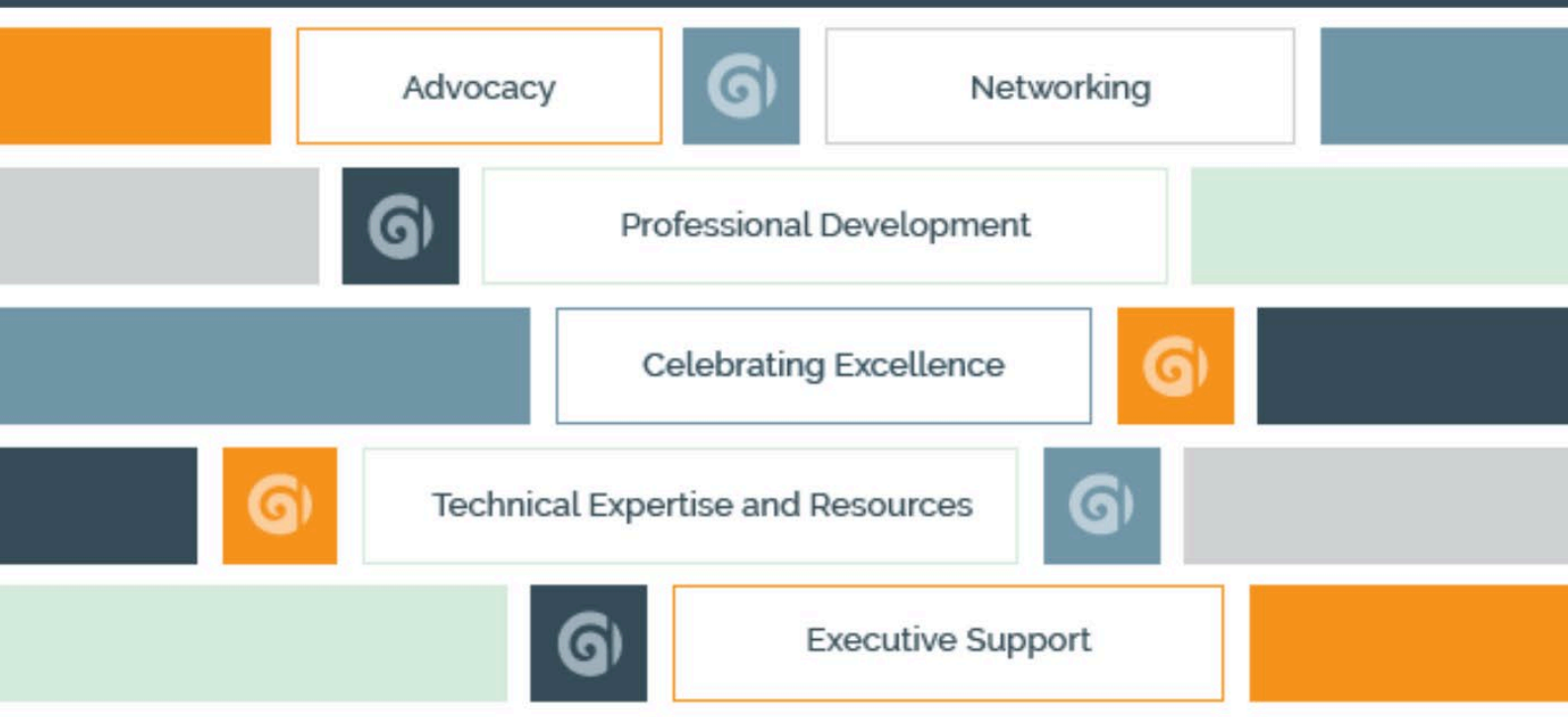
Taituarā
Local Government Professionals Aotearoa

Tuning Up The Engine 2024
- Potential Changes to Local Government Law

A submission to the
The Hon Simeon Brown, Minister of Local Government

May 2024



Foreword

When we met you on 14 May you asked that we provide you with proposals for legislative change that would streamline processes or reduce compliance costs and would be non-controversial.

Our understanding was that you were most interested in those matters that sit within your local government portfolio. We have also focussed more specifically on those changes that will not be addressed in upcoming reform legislation.

The first part of the submission focuses on those matters that could be advanced in the short-term without compromising future reform decisions or having unintended effects elsewhere in the legislation. This part makes twelve recommendations to seven different pieces of legislation and associated regulations within the local government portfolio. As many of these are located in the Local Government Act 2002, we begin with that Act and broadly follow the sequence of that Act.

Part Two of the submission sets out a longer-term work programme that would be advanced alongside the Government's policy decisions on water and resource management reform. This includes consideration of consultation and decision-making processes, the content of accountability documents and the processes for their adoption, and also the Local Electoral Act.

These items will reduce the costs and resource requirements in complying with legislation.

We commend these to you and stand ready to discuss these at your convenience.

Jo Miller
President
Taituarā
May 2024

List of Recommendations

PART ONE: IMMMEDIATE OPPORTUNITIES FOR GAIN

Cost effectiveness reviews
That the statutory requirement to undertake reviews of the cost-effectiveness of service delivery be repealed.

Local governance statements
That the statutory requirement to undertake reviews of the cost-effectiveness of service delivery be repealed.

Chief Executive contracts
That clause 34(1) – 34(6) of Schedule Seven of the Local Government Act 2002 be repealed and replaced with provisions that:

(a) limit the term of a Chief Executive's contract to five years
(b) allow a local authority to reappoint the incumbent for a further term of up to five years on completion of contract without readvertisement, or to advertise at its discretion
(c) require the review of performance (under clause 35 of Schedule Seven) no less than six months before the completion of any term.

Remuneration and employment policy
That the provisions empowering elected members to set a remuneration and employment policy be repealed in their entirety.

Pre-election reports
That all local authorities be permitted to use annual plan estimates for the financial year preceding the election date in their pre-election reports.

Mandatory measures of non-financial performance
That the requirement to make regulations specifying mandatory measures be repealed from the Local Government Act 2002. This would also invalidate the Non-Financial Performance Measures Rules 2013.

Funding impact statements
That the requirements to produce a funding impact statement (other than the elements describing the rating system) be revoked.

Fiscal prudence reporting
That the power to make regulations specifying fiscal prudence regulations be repealed from the Local Government Act 2002. This would invalidate the Local Government (Financial Reporting and Prudence) Regulations 2013x.

Protected Transactions

That section 118 of the Local Government Act 2002 be amended to allow the Chief Executive to explicitly delegate signing of a certificate of approval.

Public Notice

That the definitions of public notice in the following Acts be repealed: the Local Government Act 2002; the Local Government Act 1974; the Impounding Act 1955; the Land Drainage Act 1908; the Local Government (Official Information and Meetings) Act 1987 and the River Boards Act 1908 This would make those references to public notice in these Acts subject to the definition of public notice in the Legislation Act 2019.

Infringement Regulations

That the Department of Internal Affairs develop infringement regulations. This may require an amendment to section 259 of the Local Government Act 2002 to clarify that a category approach to infringement offences can be applied in the regulations.

Supply of rating information

That the Local Government Rating Act be amended by requiring ratepayer disclosure of all information relevant to the setting of rates and amending requirements to refund overpaid rates where the ratepayer has failed to notify a local authority

PART TWO: LONGER TERM ISSUES

Consultation

That the Government review the decision-making and consultation processes of the Local Government Act including, but not limited to

a. the range of decisions and actions that require consultation, and the form that consultation takes
b. linkages between the consultation requirements of the Local Government Act and those of other legislation and whether these require multiple processes
c. whether the legislative triggers for consultation on the annual plan are set at the appropriate level.

Long-term plans

That the Government review the purpose of long-term planning following policy decisions on the water services reform and the resource management reforms. Such a review should also include the disclosure requirements, engagement processes and the future role of the external audit.

Indexation of fines

That the Government review legislative regimes for fines to allow for indexation of fine levels We understand that this is consistent with the Government's intended approach to fines under transport legislation

Review of bylaws

That the timelines and processes for reviewing bylaws be clarified and focussed on ensuring the bylaw remains the best way of dealing with the opportunity.

Replacement ordinary votes

That the Local Electoral Regulations be amended to explicitly allow Electoral Officers to issue a replacement ordinary vote on request by those who have not already voted.

Ratepayer franchise

That the Local Electoral Act 2001 and Local Electoral Regulations 2001 be amended to allow for continuous enrolment on the ratepayer electoral franchise.

Electronic transmission of votes from overseas

That the Local Electoral Act 2001 be amended to allow electronic transmission of special votes to and from voters who will be overseas during the election period.

Part One
Immediate Opportunities for Gain

Cost-Effectiveness Reviews

The 2014 reforms to the Local Government Act inserted a requirement to review the cost-effectiveness of current arrangements for meeting the needs of communities within its district or region for good-quality local infrastructure, local public services, and performance of regulatory functions. These are colloquially referred to as 'section 17A reviews.

This amendment was intended to provide local authorities with a legislative direction to review their service delivery arrangements to find efficiency gains. No reasonable person can argue that bodies that spend public money should not be looking for opportunities to deliver services more efficiently.

This is one of the reasons why shared capability arrangements are so prevalent in the sector. The average local authority is involved in six of these and some report being involved in as many as 50. It is a major driver behind the move to make more services available online and undertake improvements to other business processes. And we have yet to see the organisational restructure that has not cited efficiency gains as a motivating factor.

We agree that local authorities should review the cost-effectiveness their service delivery arrangements from time to time. However, the section 17A process is specified in a very detailed manner including when reviews are undertaken, what options must be considered, and what happens if the review determines that governance and delivery should be separated.

In specifying to this level of detail the Act has created a potential procedural tripwire for local authorities and encouraged reviewing for its own sake. We do not think either was intended as both are the very antithesis of the outcome this provision was attempting to generate.

We submit that the principles of local government in section 14 of the Act provide local authorities with legislative signals that they should be looking for opportunities to improve. Section 14(1)(e) states that a local authority should *actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcome* . Reviews of this nature *ensure prudent stewardship and the efficient and effective use of* (the local authority's) *resources* as per section 14(1)(g).

An alternative option might be to retain the requirement but remove much of the overspecification. Undertaking a review is a 'decision' for the purpose of section 78. Local authorities are under an obligation to identify and consider the reasonably practicable options. All that would be necessary is:

(a) a requirement to review services where the local authority considers that the benefits of a review would outweigh the costs of the review
(b) a requirement to consider the costs and benefits of collaborating with other local authorities to undertake the review.

Recommendation 1: Cost-effectiveness reviews

That the statutory requirement to undertake reviews of the cost-effectiveness of service delivery be repealed.

Local Governance Statements

Section 40 of the Local Government Act requires local authorities to produce a local governance statement at least once a triennium.

These statements are compilations of information about the local authority and its governance processes. For example this includes information about the responsibilities and activities of the local authority, local legislation and bylaws, electoral arrangements, meeting processes, governance protocols and policies and some employment policies (for example the EEO policy).

This is information that should already be in existence – the governance statement brings it into a single place. This provision was a product of a time when the understanding of how to make best use of digital media (the internet in particular) with neither as universal or as advanced as it is now, A clearly designed website with a good site map and a properly working search function greatly reduces the need for this information

We also observe that some of this information isn't actually governance information. For example, one of the requirements is an EEO policy. While important, it's the Chief Executive that employs staff and is responsible for ensuring the council is observing good EEO practice.

Other required information merely replicates statute law. For example, the statement must include "information on meeting processes with reference to the applicable provisions of the Local Government Official Information and Meetings Act and standing orders". That invites a council to cut and paste the relevant part of that legislation and their standing orders.

Recommendation 2: Local governance statements

That the statutory requirement to undertake reviews of the cost-effectiveness of service delivery be repealed.

Employment Matters

Chief Executive Contracts

Clause 33 to 35 of Schedule Seven regulate the employment of Chief Executives. Like a departmental Chief Executive, a local authority Chief Executive is appointed for a maximum term of five years. Unlike a departmental Chief Executive, the council cannot reappoint a Chief Executive without advertising, though it can provide a one-off extension to a contract for up to two years. No less than six months out from the completion of a five-year term the council must complete a review of the Chief Executive's employment including an assessment of performance and the incumbent's skills and attributes.

These provisions ensure that Chief Executives have no expectation that, all other things being equal, a failure to reappoint on completion of a term would give grounds for a personal grievance under employment legislation. We submit, however, that clause 34 in its entirety is overly prescribed and that all that is required for that purpose are clauses 34(7) and 35 which requires a review of the incumbent's performance and a determination whether the incumbents' skills and attributes are what the council needs moving forward.

A requirement to readvertise can make Chief Executives risk adverse and discourage "free and frank" advice and innovation and make them very conscious about offending political groups or factions on council. Local authority Chief Executives are in a very different position from a Departmental Chief Executive, in that their political masters are their employers, there is no State Services Commissioner to intercede and for example, remind elected members that advice should be politically neutral.

Increased job uncertainty may decrease the number of qualified and experienced persons prepared to apply for a Chief Executive position. In some small rural local authorities, it is difficult to attract and retain managers, and the fixed term regime is a further disincentive to apply. Economic theory tells us that uncertainties of this nature will be reflected in the salary demands as a 'risk premium' is introduced into the process.

The nature of the employment process also makes it more difficult to retain Chief Executives. In the last five years 51 of the 78 local authorities have changed their Chief Executives – almost two-thirds. The loss of expertise is significant.

Quite apart from these factors, the requirement to readvertise creates an additional (and quite unnecessary) cost on communities. A council that does nothing other than advertise can expect a cost in the low five figures, a council that gets outside

assistance with a search can expect a bill of around $50,000 (a very significant impost for a smaller community).

Last but not least, this provision is inconsistent with the general intent of the Local Government Act. Local authorities are empowered to promote community wellbeing, and in pursuit of that purpose make day to day decisions involving millions of dollars (including powers to tax, borrow, build, or acquire assets). How does this sit with a provision that effectively says that they cannot be trusted to assess their Chief Executive's performance and attributes?

Recommendation 3: Chief Executive contracts

That clause 34(1) – 34(6) of Schedule Seven of the Local Government Act 2002 be repealed and replaced with provisions that:

(a) limit the term of a Chief Executive's contract to five years

(b) allow a local authority to reappoint the incumbent for a further term of up to five years on completion of contract without readvertisement, or to advertise at its discretion

(c) require the review of performance (under clause 35 of Schedule Seven) no less than six months before the completion of any term.

Remuneration and Employment Policy

Clause 36A of the seventh schedule to the Local Government Act provides elected members with the power to set a binding policy on remuneration and staffing.

The 'case' for this particular reform was based on an assertion that local government salaries had increased at more than twice the rate of salaries elsewhere in the economy. We have never been able to substantiate this claim from any independent source. Our analysis based on the Labour Cost Index prepared by Statistics New Zealand suggested that the movements in all salary and wage costs over the last eleven years have not been greatly different – 27 percent in local government and 25 percent in central government.[1]

Our understanding was that this policy was intended to operate in a similar manner to that which applies in the civil service. That is to say that the Government of the day may specify a total 'cap' on the number of employees in the core public service and a total limit on civil service remuneration**.**

[1] Statistics New Zealand, All Salary, and Wage Rates June years 2012-2023.

We do not believe that the policy intent has been captured in the legislation. As currently worded the provision is vague

A local authority may adopt a policy that sets out the policies of the local authority in relation to—

(a) employee staffing levels; and

(b) the remuneration of employees[2]

Worded in this way, this appears to allow the council to adopt policies that sit below the 'whole of council' level. This invites elected members to attempt to specify the number of employees who work in each group of council (e.g. there will be no more than *x* rates clerks, or *z* librarians) or specify remuneration of individual employees. We have been aware of circumstances where elected members have, or in one case are, threatening to use these provisions to set the salaries of the second-tier management.

We submit that local authorities already set a limit on spending on remuneration (and other inputs for that matter) in their long-term and annual plan. These plans are subject to consultation (unlike the remuneration policy). We add that specifying staff numbers is a very blunt and largely ineffective way of controlling inputs as officials may turn to consultants to meet council expectations, at greater cost. Officials did identify this risk is identified in the RIS that accompanied the Bill.

To the extent that elected members are able to exercise a right of veto over staffing and employment decisions, this will have the effect of blurring the line between governance and management established in the reforms of 1989. The "second-order impact" of this policy setting are likely to include more difficulty in attracting quality applicants for Chief Executive, and an increase in employment disputes.

Recommendation 4: Remuneration and employment policy

That the provisions empowering elected members to set a remuneration and employment policy be repealed in their entirety.

[2] Clause 36A, Schedule 7 of the Local Government Act 2002.

Accountability Documents

Legislation provides local authorities with the powers to undertake any act or transaction in pursuit of the purpose of local government. Additionally local authorities are equipped with a set of coercive powers such as the powers to tax, regulate activity, enter property, and take land (with compensation).

Local government accepts that it is accountable to the community for the use of these powers – especially the stewardship of the assets it holds on behalf of the community, and the funds it raises from the community. The accountability regime includes powers to set out and engage on a medium-term and short-term statements of intent, and on report on the delivery against these intentions.

This does not mean that the accountability regime is fit for purpose. Long-run the planning, decision-making and engagement regime needs a first principles reform to ensure it remains fit for purpose in the wake of reforms to water services and the Resource Management Act.

In the short term however there are four amendments that can be made immediately that will take some costs and compliance from the system with little reduction in accountability.

Pre-election reports

The pre-election report (PER) is a document that was intended to put the financial stewardship of the outgoing local authority, and its key spending issues 'front and centre' in the election debates. The document contains:

- historic financial statements from annual reports (e.g. the pre-election reports released in 2025 will contain historic financial information for the 2022/23 and 2023/24 financial years). This data comes from annual reports
- an estimated financial outturn for the financial year preceding election year (that is the pre-election reports released in 2025 will have an estimated outturn for the 2024/25 financial year)[3],[4]
- a report on the local authority's performance against the financial limits and target set in its financial strategy
- forecast financial LTP information for the three years following election year. A 2025 PER will contain forecast financial information for the 2025/26, 2026/27 and 2027/28 financial years

[3] Local authorities with a usually resident population of 20,000 or less have the option of substituting information from their annual plan.

[4] The local authority financial year ends on 30 June. With the due date for PER being two weeks before nomination day (i.e. usually at the end of July), there is no opportunity for local authorities to prepare actual information and get this audited.

- information about the major projects planned for the three years following election year. This information comes from the local authority's LTP.

For the most part, the document draws together information that already exists into a single document. Few local authorities have identified significant issues with the production of PER, with few indicating that the requirement created significant additional costs for the local authority. The biggest concern that most express is around the requirement to include an unaudited estimate of the financial out-turn for the year prior to election year, especially as the actual outturn will be included in annual reports that are generally released in the weeks after local elections. Numbers can change significantly, if for example an asset value changes significantly, meaning there is the potential for misuse of information.

The PER does have benefits as a single 'source of truth' which local authorities can use as source material for their own information campaigns (including responding to any factual inaccuracies that come up during the campaign). The PER serves as a kind of 'quick reference guide' to key financial and non-financial information that an elector who intends to cast an informed vote could use. A slight streamlining of the requirement to allow all local authorities to use the annual plan forecasts for the year preceding election year would reduce the cost of preparing these. These numbers are used as the basis for setting rates so should be reliable.

Recommendation 5: Pre-election reports

That all local authorities be permitted to use annual plan estimates for the financial year preceding the election date in their pre-election reports.

Mandatory measures of non-financial performance

Local authorities are required to report against a set of 19 measures of non-financial performance across five particular groups of activities relating to network infrastructure (three waters, flood control and roads and footpaths). The Local Government Act requires the Secretary for Local Government to:

(a) consider whether an existing performance measure is suitable for the purpose; and

(b) have regard to whether a performance measure—

(i) measures the level of service for a major aspect of the group of activities; and

(ii) addresses an aspect of the service that is of widespread interest in the communities to which a service in relation to the group of activities is provided; and

(iii) contributes to the effective and efficient management of the group of activities.

The current set of measures fall below these standards. Some measures such as *"the percentage of the sealed local road network that is resurfaced"* make a dubious contribution to the effective and efficient management of an activity in that they could incentivise activity for activity's sake. Others, such as various measures of customer response time (which we agree is important) require investment in systems development.[5] Others appear to be simple binary statements such as *"The major flood protection and control works that are maintained, repaired and renewed to the key standards defined in the local authority's relevant planning documents (such as its activity management plan, asset management plan, annual works program or long-term plan)."*

We acknowledge our concerns are shared both within the sector and by other agencies, for example the Office of the Auditor-General remarked that *"(it) has previously remarked that some of the mandatory performance measures do not provide a meaningful indication of a council's performance. In our view, it is timely for the Department of Internal Affairs review the current suite … "*[6]

The then Associate Minister of Local Government responsible for developing the authorising legislation saw these as a means of identifying best practice and providing communities with a common language for expressing levels of service. In fact there's been a marked lack of interest on the part of local communities in the measures – at the time of writing we are unaware of any ratepayer or sector group that has shown any interest in the measures or in compiling any 'league table' or 'composite index of performance'.

We also note that any economic regulator is likely to have their own views on the appropriate measures of non-financial performance for water services. They will be running the information disclosure regime. Collecting two sets of measures for slightly different purposes would add still more cost, Assuming that the Commerce Commission fills the role of the regulator we submit that it is best placed to determine what the appropriate measures are in conjunction with Taumata Arowai.

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[5] As a result, several local authorities receive modified annual report opinions because they have not, as yet been able to justify the investment in systems to their communities.

[6] Office of the Auditor-General (2019), *Matters Arising from the 2018-28 Local Government Long-Term Plans,* pages 24.

The Local Government Act requires the Secretary of Local Government to set performance measures. Merely revoking the existing regulations will not be sufficient – section 261 of the Act must also be repealed.

This is not to say that the setting of levels of service, and the associated performance measures and targets is not a critical part of good local governance, or that robust comparisons with others are not a valuable information source. Our own guidance *Your Side of the Deal* highlights both. We consider that a lot more can be done to encourage the sector to select a few relevant, customer-focussed measures.

Recommendation 6 : Mandatory measures of non-financial performance

That the requirement to make regulations specifying mandatory measures be repealed from the Local Government Act 2002. This would also invalidate the Non-Financial Performance Measures Rules 2013.

Funding impact statements

Local authorities are required to produce a financial statement that is unique to local government – the funding impact statement (FIS). The FIS applies at two levels:

- *the whole-of-council FIS* – which is in two parts: a disclosure of how rates are set and assessed (we support this and have issued much guidance about doing this well) and a statement showing funds moving into and out of the local authority and
- *the group of activity FIS* – a statement showing funds moving into and out of each group of activities.

The financial components of the FIS are additional to the statements required under Generally Accepted Accounting Practice (GAAP). Presentation of the FIS is regulated under the Local Government Financial Reporting and Prudence Regulations 2014. These contain a sample of the statement for each of the whole of council and group level FIS – no variation in presentation is permitted.

The FIS differs from GAAP statements in two key respects:

- it is intended to deal only with cash items – transactions such as the vesting of assets (especially common in growth councils) or revaluations are excluded
- a whole of council FIS must balance.

The FIS was introduced on the rationale that *"most ratepayers do not understand the principles of accrual accounting and therefore find council accounts incomprehensible"*. We are unconvinced that having two sets of financial information each prepared on a slightly different basis actually provides transparency for the reader.

Local authority finance managers and LTP project managers report that there has been no lesser or greater level of interest in financial information as a result of producing the FIS.

We are aware that some local authorities do find the cash orientation of the FIS useful and have built their reporting to elected members around the FIS. But in general, this appears to be a low value financial disclosure.

Recommendation 7: Funding impact statements

That the requirements to produce a funding impact statement (other than the elements describing the rating system) be revoked.

Fiscal prudence reporting

The Local Government Financial Reporting and Prudence Regulations also introduced a second element, the so-called financial prudence benchmarks. These were designed to:
"encourage greater financial discipline in the local government sector and will meet concerns about rising rates and council debt. They will foster a culture of continuous improvement across the sector and showcase best practice and excellence in local authority financial management. The regulations will also provide information about councils' financial health. They will make it easier for ratepayers to assess their council's financial state and will promote better financial decision making." [7]

Considering the set as a whole it is difficult to see how the benchmarks meet the above state objectives:

- there's no linkage to any measures of service or service improvement i.e. they are financial indicators only

[7] Department of Internal Affairs, Finance Prudence Regulations, last retrieved from https://www.dia.govt.nz/Implementing-the-2012-Amendment-Act#implementing2 on 17 May 2024.

- the so-called 'rates affordability' and 'debt affordability' benchmarks are nothing more than whether the local authority met the limits on rates and debt that were set in their own financial strategy. That is to say that the benchmarks are self-determined. These may send perverse incentives i.e. knowing that a reporting requirement exists may encourage local authorities to leave more headroom, undermining the intent that these limits act as a strategic control
- the inclusions and exclusions from some may not be readily understandable to many of the general public. For example, the debt servicing benchmark excludes the following items from the definition of revenue: development contributions, financial contributions, vested assets, gains on derivative financial instruments, and revaluations of property, plant, or equipment. All those make sense to a person with some knowledge of finance but limit this measure's usefulness to the layperson.

Recommendation 8: Fiscal prudence reporting

That the power to make regulations specifying fiscal prudence regulations be repealed from the Local Government Act 2002. This would invalidate the Local Government (Financial Reporting and Prudence) Regulations 2013.

Certificates of Approval

We turn now to a technical requirement that sits within the borrowing powers of Part Six of the Local Government Act 2002.

Section 118 of the Act establishes that a local authority's financing transactions under this Act are deemed a protected transaction. This makes them valid and enforceable at law even where there is a procedural or technical error – for example there was some defect in the appointment of some agent or attorney of the local authority acting on the transaction.

This provides lenders and borrowers with confidence, lowers the lenders assessment of risk in a particular transaction. Local authority borrowing occurs in a political environment, were this protection not there those opposed to a particular project or transaction would devote their energies to finding flaws in resolutions in an attempt to 'defund' the project.

To activate the protections of section 118, the local authority's Chief Executive has to sign a certificate of approval. The certificate of approval is deemed to be conclusive proof of compliance with the statutory requirements that apply to the transaction.

While this is a sound regime, there are practical difficulties with applying it. The only person that can sign the certificate is the CE. That simply doesn't work where councils need to enter into financing transactions, but the Chief Executive isn't available.

The offices of Acting Chief Executive or an Interim CE aren't offices recognised under the LGA. Despite councils delegating powers under the Act lenders do not accept a certificate signed by an Acting or Interim Chief Executive unless the local authority provides a solicitor's opinion stating that they have reviewed the council resolutions and confirming that the Acting / Interim CE has all the powers of the Chief Executive and can therefore sign the certificate of approval.

In preparing this part of the submission we spoke to one of the law firms with a significant share of the local authority market. They advise us that the firm signs an average of one of these opinions a week. They comment that *"while good for us, it's hardly efficient*". We agree.

Those working on water services legislation might also note this issue as they prepare the legislation giving powers to the financially separate, council owned organisations. This issue was initially raised with us during the passage of the repealed Water Services Legislation Bill that placed water service entity borrowing under a protected transactions regime.

Recommendation 9: Protected Transactions

That section 118 of the Local Government Act 2002 be amended to allow the Chief Executive to explicitly delegate signing of a certificate of approval.

Public Notice

Various local government statutes require local authorities to give public notice of various future actions (such as the or the making of a bylaw) or the availability of a particular option (such as the community's right to demand a poll on electoral systems).

We have no concerns about requirements to provide public notice in and of itself. These provide important information about a local authority's intended actions or of the availability of particular information or of a legislative right.

Our concern is that the definition of public notice varies from Act to Act In the Local Government Act 2002 public notice requires both of

a. publication of the required notice on the Local Authority's internet site and
b. either publication of the required notice in at least one daily newspaper circulating in the region or district of the local authority or 1 or more other newspapers that have a combined circulation in that region or district at least equivalent to that of a daily newspaper circulating in that region or district

The Local Government Act 1974, which still applies to some road-related functions requires publication in a newspaper in general circulation or (where no such newspaper is available) publication on a placard in the area to which the notice relates.

But the Local Electoral Act and other legislation contain no definition, in which case the definition defaults to that in section 13 of the Legislation Act 2019 which is more permissive in choice of media Local authorities may use any or all of:

a. publication on an internet site maintained by or on behalf of the local authority or
b. one or more newspapers circulating in the area or
c. publication in the New Zealand Gazette.

We observe that newspapers have become something of a disrupted technology thanks to the internet and the prevalence of electronic media. In some smaller communities' newspapers may now only appear weekly. Regardless advertising in newspapers is also becoming increasingly expensive.

We submit that the legislative default in the Legislation Act is now the most appropriate manner for public notice to be given, including the option of relying on multiple forms of notification.

Other legislation in your portfolio that would be affected by this change includes the:

- Dog Control Act 1996 (which refers directly to the definition in the Local Government Act 2002)
- Freedom Camping Act 2011 (which also refers directly to the definition in the Local Government Act 2002)
- Impounding Act 1955 (which uses a similar definition to the Local Government Act 1974)
- Land Drainage Act 1908 (Local Government Act 1974)
- Local Government Official Information and Meetings Act 1987 (Local Government Act 2002)
- River Boards Act 1908 (Local Government Act 1974)

Recommendation 10: Public Notice

That the definitions of public notice in the following Acts be repealed: the Local Government Act 2002; the Local Government Act 1974; the Impounding Act 1955; the Land Drainage Act 1908; the Local Government (Official Information and Meetings) Act 1987 and the River Boards Act 1908 This would make those references to public notice in these Acts subject to the definition of public notice in the Legislation Act 2019.

Infringements Under the Local Government Act

The Local Government Act 2002 provides for the making of regulations to prescribe which breaches of bylaws are infringement offences, with associated infringement fees. Without these regulations a breach of a bylaw is not considered an offence and no infringement fees are payable. Consequently this means that other breaches of bylaws under the Local Government Act must either be prosecuted through the courts or ignored altogether. The former is a time-consuming and costly enforcement tool, which makes prosecution inappropriate for all but the most significant of breaches.

Regulations prescribing infringement offences have not proceeded in part due to difficulty with the wording of section 259 of the Act, which sets the scope of the regulation making power. As council bylaws differ to suit their local situation, the possible breaches of bylaws will differ between local authorities. The practical solution is for the infringement regulations to be based on categories of offences, rather than specifying every offence in every council bylaw.

We support a category approach and understand that Crown Law has confirmed that a category approach can be taken under section 259, but that this is not supported by other government advisers. Clarification on implementation of section 259 would assist.

An alternative would be to amend section 259 to specify any bylaw breach as infringement offence (this is the approach in the Dog Control Act 1996) or to amend section 259 to enable local authorities to specify their own infringement offences (this is the approach in the Litter Act 1979).

Recommendation 11: Infringement Regulations

That the Department of Internal Affairs develop infringement regulations. This may require an amendment to section 259 of the Local Government Act 2002 to clarify that a category approach to infringement offences can be applied in the regulations.

Supply of Rating Information

In this section we discuss an amendment to the Local Government (Rating) Act 2002.

Local authorities have access to a very powerful tool in the targeted rating powers allowed under Schedules Two and Three. This tool allows local authorities to select from a wide selection of bases for setting rates empowering a range of tailored local solutions to funding issues. But this flexibility has to be traded off against compliance costs. One of the major aspects of compliance cost is the generation and maintenance of information necessary to set and assess the rate.

Not all of the factors in Schedule Three are collected by the valuers as part of the revaluation process. In particular, the valuers take little role in determining the number of separately used or inhabited portions of a property (or SUIPs). While this is appropriate as different local authorities, quite legitimately, have different definitions of SUIP and some can turn on narrow distinctions of fact, this is one of the most common bases for setting targeted rates.

Establishing what is and isn't a SUIP is reliant on having reliable, up to date information. Parts of a property move into and out of SUIP status all the time. In similar vein properties or parts of properties change use for differential purposes all the time.

Yet all this information is reliant on the ratepayer to disclose the information that is relevant for the calculation of their rating liability. At the present time the ratepayer is required to disclose only when properties are sold or some other circumstance that is relevant to determining who the ratepayer is. Other circumstances relevant to the calculation of rates (such as a change of use) are not well captured under these provisions.

We submit that the Act should incentivise people to take timely action to notify the local authority of sale, lease, change in use and the like. In addition to a specific requirement, the incentive of not being able to claim refunds where the ratepayer has failed to notify relevant changes.

Recommendation 12: Supply of rating information

That the Local Government Rating Act be amended by requiring ratepayer disclosure of all information relevant to the setting of rates and amending requirements to refund overpaid rates where the ratepayer has failed to notify a local authority of a change in a reasonable period of time.

Part Two
Longer-Term Issues

Introductory Comment to Part Two

In this part we briefly sketch some of the wider areas where further investigation and policy work is needed. These include:

- consultation and decision-making
- long-term planning (including the audit of long-term plans)
- bylaws
- the Local Electoral Act

Consultation

The principles set out in the Local Government Act 2002 and from the case law around consultation make it clear that consultation is a process involving an exchange of information between a local authority and its community. The third element of the consultative process is consideration of the views coming out of consultation, and then a decision as to whether and how that information might alter the proposal, or view on the issue.

The requirements to consult are often cited as an area that is overly prescriptive, duplicative, and a source of cost and compliance burden among local authorities.

In and of themselves the statutory processes to consult in the Local Government Act are not prescriptive. The special consultative procedure require only that the local authority prepare a consultation document, have a period of at least one month to accept community feedback, and at least one opportunity to interact with representatives in a spoken or sign language format.

Further, the Act allows local authorities some flexibility in their choice of engagement methods, and the period of engagement with many of the lower-level decisions they make. In these instances local authorities need to demonstrate two things. First, that their choices give effect to a set of principles of consultation – sometimes referred to as 'section 82' consultation. And second, that their decisions give effect to any policies they have set for themselves in a (mandatory) significance and engagement policy.

It may be that claims about the prescriptiveness go more to the content of the consultation documents (some of which are tightly prescribed) and, in some cases, seeking external assurance on those documents. The discussion on long-term plans considers this in more detail.

There are areas of potential duplication in the consultation processes.

There is a mandatory list of decisions set out in the Local Government Act. These include adoption of a long-term plan, annual plan(in some circumstances), bylaw, establishment of a council-controlled organisation (CCO), a decision to dispose of a strategic asset, and the adoption of certain funding policies and of the significance and engagement policy.

For the most part we agree with this list, especially as many of these decisions now allow for local authorities to tailor processes. Some individual triggers may no longer be appropriate. For example, the previous government required local authorities to treat port and airport company shares as a strategic asset which would require consultation before disposal.

But more practically there are circumstances where combinations of more than one of the above decisions can give rise to an obligation to consult twice. A good example of this is the streamlining that the upcoming water services legislation will be doing to ensure that councils need only consult once on a decision to establish a water services CCO.

Any mandatory plan, strategy or policy adopted under other legislation comes with a requirement to consult. Those strategies, policies and plans that have either service level or financial consequences will also have to go into the accountability cycle of the Local Government Act. Because these are each subject to their own obligations to consult, this means the same submitter could potentially submit three times on the same issue. This is not confined to asset-based activity – for example, someone opposed to the restrictions in a dog-control policy could attempt to impede implementation of the policy by submitting in favour of reducing the level of funding appropriated for regulatory activity.

Changes made to legislation in 2014 gave local authorities the option of not consulting on their annual plans where no significant or material variations from the long-term plan are proposed. A lot of hinges on the assessment of what is significant or material – legislation might provide more guidance on this. In a high inflation environment it is practically very difficult for local authorities to justify a decision not to consult in the annual plan

Our observations is that there is therefore some reluctance to take up this flexibility. In part there is a tendency to be risk averse and engage if in doubt. But equally councils take the view that there are advantages to taking the opportunity to engage such as early opportunities to engage.

Part of the answer lies in practice. There are excellent examples of engagement both in the statutory and non-statutory context. Risk aversion is part of the reason for this. Councils have flexibility in how they choose to interact with the public face-to-

face yet there the formal hearing model tends still to be the option of choice. Councils may run two or more consultations together providing the information about each is clearly distinct – it is not clear how often this is taken up in practice. We accept that the review should include a free and frank assessment of the role of guidance and the sharing

Recommendation 13: Consultation

That the Government review the decision-making and consultation processes of the Local Government Act including, but not limited to

a. the range of decisions and actions that require consultation, and the form that consultation takes

b. linkages between the consultation requirements of the Local Government Act and those of other legislation and whether these require multiple processes

c. whether the legislative triggers for consultation on the annual plan are set at the appropriate level.

Long-Term Planning

As the champion of effective management in the local government sector, Taituarā does not resile from the need for local authorities to undertake long-term planning. In the words of the Auditor-General;
"Regardless of what the future might hold for local government, councils need to ensure that they continue to deliver the services that their communities rely on every day. Many of these services rely on assets that are expensive to build and maintain and need to operate effectively for many years. Careful planning is therefore needed to ensure that services are maintained at the standards that communities expect and at a reasonable cost."

This does not mean that we endorse the form and content of the long-term plan as it stands. Legitimate questions have been raised about the fitness for purpose of the statutory document both as a means for promoting 'the right debate', and as a means for ensuring accountability.

The list of mandatory contents of a long-term plan now extends to some seven pages in the Local Government Act 2002. We observe that the disclosure requirements appear to have some grounding in a belief that requiring disclosure in an LTP is a means of making sure a particular function (such as asset planning) happens.

One of the tools we produce to support long-term planning is a quality assurance checklist. This lists the mandatory requirements and various issues that underpin these requirements. That list now runs to almost 40 landscaped pages

The Office of the Auditor-General itself has recommended that:
"that the Department of Internal Affairs and the local government sector review the required content for long-term plans to ensure that they remain fit for purpose, particularly: – the current suite of mandatory performance measures; – the disclosure requirements for financial and infrastructure strategies; – disclosures required under the Local Government (Financial Reporting and Prudence) Regulations 2014; and – how assumptions are disclosed in long-term plans."

We have considered whether the existing disclosure requirements are fit for purpose on several occasions over the years. At our last review (2020) our thinking was that:

- the community outcomes process may duplicate aspects of the spatial plan and could be repealed
- there is duplication in the required disclosures of forecasting assumption and the risks associated with these. It is very important that local authorities disclose these well as an assumption such as the amount and timing of third-party revenue is critical to the planning outcomes

- both the mandatory financial and non-financial performance measures struggle to connect with the public (earlier in this submission we identified both as a short-term opportunity)
- preparing two sets of financial statements under slightly different rules is confusing at best, misleading at worst (again, this was identified earlier in this submission)
- while some council-controlled organisations deliver major activities or provide revenues that are critical to the overall financial strategy, most do not. Disclosures in the long-term plan should focus on the former.

But the content of a long-term plan cannot be neatly separated from the wider policy and operational context in which the sector operates.

In particular, to what extent does Local Water Done Well impact on the shape of local government accountability? We observe that a significant element of the previous Government's Water Services Legislation Bill was devoted to just this issue. With a choice of delivery model open to local authorities a single set of disclosure requirements may not be sufficient.

In a similar vein, some models of spatial planning might well subsume significant aspects of the community outcomes process and could replace that process. In any case a linkage to the corporate planning process is necessary to link to the actual raising of funds.

One of the most frequently cited drivers of cost in the long-term planning process is the audit process. Subjecting public sector agency plans to a prospective audit is uncommon (possibly unique). In some smaller local authorities the costs of audit approach one percent of their budget (though this includes the annual report audit).

The audit of long-term plans was added in the latter stages of passage of the Local Government Act to promote robust, effective, long-term service planning and financial management. It has brought some degree of robustness to asset planning, the setting of levels of service. and strategic financial management. Audit has also acted as some check on poor practice in areas such as rate-setting.

Some local authorities could do more to manage their audit costs. For example, by reviewing their non-financial performance reporting, or by taking steps to improve the quality of their underpinning planning information and systems.

For all that, we are less convinced that auditors can reasonably attest to the engagement and communications aspects of an LTP. While the auditor has a role in ensuring information is presented in accordance with Generally Accepted Accounting Practice and with applicable regulations, we are unconvinced that the auditors'

involvement in presentational matters adds much to the overall result. We understand that this this is a small component of the overall audit but is a source of concern to many in the sector.

In short, a first principles look at the future of the long-term plan is required in the wake of the water services reform and the resource management reforms. This should include the purpose, content, and statutory processes (including engagement and the role of an independent attest),

Recommendation 14: Long-term plans

That the Government review the purpose of long-term planning following policy decisions on the water services reform and the resource management reforms. Such a review should also include the disclosure requirements, engagement processes and the future role of the external audit.

Bylaws

The Local Government Act was intended to consolidate and simplify all the powers that local authorities have to make bylaws (or at least those that sit in the Local Government portfolio). For the most part it was successful in achieving those objectives though a single generic power for all bylaws remains something of a holy grail. There are two areas where we consider further work would pay dividends.

Indexation of fines

The draft Government Policy Statement on Land Transport indicated that the Government was considering the merits of indexation of fees and fines under transport legislation.

Prescribing fines in legislation can lead to their becoming outdated and losing both their deterrent value and making it less cost effective to pursue enforcement action, especially through the courts.

There is statutory precedent for such a proposal. Section 203 of the Local Government Act allows local authorities to adjust their development contributions each year by an amount up to the movement in the Producers Price Index without having to reconsult.

Recommendation 15: Indexation of fines

That the Government review legislative regimes for fines to allow for indexation of fine levels We understand that this is consistent with the Government's intended approach to fines under transport legislation .

Review of bylaws

The bylaw powers are among the more ambiguously drafted provisions of the Local Government Act.

We turn to one of the least clearly drafted, and most frequently queried provisions in the Local Government Act as it currently stands. Local authorities were required to review bylaws made under the Local Government Act within five years of the bylaw being made, and at five yearly periods thereafter, Section 160A provides that a bylaw that has not been reviewed in this way is deemed to have been revoked two years after the date on which the review should have been undertaken.

Bylaws are intended to regulate activity – by prohibiting some activity, or requiring others be undertaken in a particular way and so on. Regular review of a bylaw ensures not only that it remains current, but that the limits on activity remain justified. Placing a deadline for the review is intended to ensure that this is done.

However, the provision does not clearly specify what Parliament intended happen at that point. Providing two years before the bylaw is automatically deemed revoked has created some confusion. As one regulatory team leader observes *"What exactly must happen within the two-year window? S158 references no later than 5 years after the bylaw was made (which is the date the council resolved to make the bylaw or the date the bylaw came into force) but s159 says no later than 10 years after it was last reviewed – is this the date of the agenda for the resolution that the council has completed the review and determined that a bylaw remains an appropriate way of addressing the perceived problem?*

Is a bylaw that has not completed the process under S160(3) within 5 or 10 years of the date the bylaw was either made or the date of the most recent completed process under S160(3) – does this mean the bylaw is automatically revoked on the 2-year anniversary of that date and council must make a new bylaw to which the 5 year review period applies – or is it something else?"

There may be opportunities to streamline the process for review. Some bylaws will always remain necessities, for example heavy traffic bylaws, litter bylaws and the like. In these cases a review should focus on the local authority re-establishing that a bylaw remains the best means of dealing with a problem and that the bylaw remains the best form of bylaw.

Recommendation 16: Review of bylaws

That the timelines and processes for reviewing bylaws be clarified and focussed on ensuring the bylaw remains the best way of dealing with the opportunity.

The Local Electoral Act

In their 5 December Briefing to you officials noted that
"The local electoral framework is out of date, vulnerable due to its reliance on postal services, and not meeting public expectations for electoral administration."[8]

We concur. The Local Electoral Act 2001 was written in a time when the world was on the cusp of a primarily paper-based systems and practices to primarily online systems and practices. Few people used electronic media for financial transactions, social media sites such Facebook and Twitter did not exist.

We observe that there are differences in practice between the Local Electoral Act 2001 and the Electoral Act 1993. Electoral officers increasingly report that, for example, limits on advance voting[9] and the inability to send and receive votes from overseas via a secure online means alienate potential voters.

Although the Local Electoral Act is, in truth, well overdue a complete rewrite we offer three matters below that require a moderate amount of policy work.

Replacement ordinary votes

Steps can be taken to make the act of voting more convenient for electors without endangering the integrity of the poll. One of the most frequent elector frustrations is that they cannot make an ordinary vote if, for example, they saw a booth open for advance voting or another official place. In those circumstances the elector has to be issued a special vote – which is a time-consuming process.

Better empowering advance booth voting would be most effective if councils were able to issue a replacement ordinary vote. In effect this would mean that if an elector presents themselves at an advance polling place, the staff would be able to print off their paper (including the bar code and other features designed to support end to end assurance). The alternative at present is that the elector would either claim they lost or spoiled their paper (and be issued a special vote) or they would be turned away.

We do not intend that this be a device for allowing people to change their vote if they have "buyer's remorse". A person who attempts to vote more than once would still be subject to the provisions of the LEA, including potential prosecution.

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[8] Department of Internal Affairs (2023), Local Government Briefing – Coalition polices for local electoral changes, page 10.

[9] Actually, the nearest that local authorities can offer for equivalence to advance voting is offering a place to drop off completed ballots. We are aware of local authorities that are offering special voting in advance though as we shall see this has practical difficulties.

Recommendation 17: Replacement ordinary votes

That the Local Electoral Regulations be amended to explicitly allow Electoral Officers to issue a replacement ordinary vote on request by those who have not already voted.

Continuous enrolment on the ratepayer roll

One of the features unique to local elections is the existence of the non-resident ratepayer franchise i.e. a ratepayer who lives in Auckland but owns property and pays rates in Thames, can vote in both local authority elections if they register as a ratepayer elector.

A person wanting to vote as a ratepayer elector needs to register as a ratepayer elector in the relevant local authority (Thames-Coromandel in the above example). The Act requires local authorities to notify ratepayers with postal addresses outside the area of the option, and publicly advertise the option once every three years.

Unlike the residential roll, a person who wants to stay on the ratepayer roll needs to re-register each election. The nature of the enrolment process is such that only the truly committed take up ratepayer enrolment. Turnout on this franchise is generally a great deal higher than for other voters - in past elections turnout of ratepayer electors has generally been 75 – 80 percent.

The eligibility for the ratepayer franchise is determined from information on the local authority's rating information database (a collection of information that is used for assessing and collecting rates).

A person becomes eligible for the ratepayer roll through the act of acquiring a property in a district in which they do not normally live. The local authority becomes aware of the acquisition when it receives a notice of sale (which the former owner is responsible for furnishing).[10] Amendments to the local authority's district valuation roll are made through a process known as 'roll maintenance' – which some local authorities undertake themselves and others contract their valuer to undertake for them. That the new ratepayer is eligible for the ratepayer franchise is picked up through the ratepayer's address for sending rates assessments/invoices as it appears on the district valuation roll (DVR).

[10] Section 32, Rating Act, it is this act that is the means through which the former owner removes themselves as the person liable for rates.

It is this process that could be used to determine when a ratepayer elector is no longer eligible for the ratepayer roll. All this requires is the addition of an indicator to the rating unit's entry on the local authority's rating information database (not the district valuation roll) that signals whether the owner is on the DVR.[11] When a property is sold, the person doing the roll maintenance is made aware the property was formerly owned by a ratepayer elector and advises the electoral officer.

Ratepayer electors may remain eligible for the roll but choose not to stay on it. Currently, all they need do is not return the form when the registration process opens. This change would require a ratepayer elector to take action to get themselves *removed*. That requires some redesign of the existing forms or the creation of a new form signalling the elector's wish to leave the roll.

Section 27 of the Local Government Rating Act 2002 allows a local authority to use information on the database for communication with ratepayers. In this era of privacy and litigiousness it may be desirable, but probably not essential, that this provision be amended to put the use of information for administering the ratepayer franchise beyond doubt.[12] There would be a need to change some of the regulations governing preparation of the ratepayer roll. Regulation 15 would need to change to allow for the possibility of a ratepayer deciding to remove themselves from the ratepayer roll. A similar change would be required to regulation 17.

Recommendation 18: Ratepayer franchise

That the Local Electoral Act 2001 and Local Electoral Regulations 2001 be amended to allow for continuous enrolment on the ratepayer electoral franchise.

Electronic transmission of votes from overseas

The LEA and Regulations currently only allow voters wanting to cast a special vote to receive or deliver the documents by post or in person. This makes casting a special vote problematic at best for those voters who are overseas. In essence the voter has to know that they will be at a particular postal address during a particular window of

[11] A local authority's rating information database holds all the information necessary to set and assess rates. This includes the information on the district valuation roll, but in many cases also includes other information valuers do not collect and which is used to set rates.

[12] The provisions governing the use of, and access to, information on the rating information database and the links between these provisions and other statute that draws on this information are well-known for their overall lack of coherence and ability to 'talk to' each other.

time (in some parts of the world that window may be as narrow as 2-3 days even if the international postal system works to the optimum).

The Electoral Regulations 1996 permit the electronic transmission of special voting documents from electors who are overseas, provided that a secure means of transmission is available.[13] We can see no reason why a similar provision could not be incorporated into the Local Electoral framework.

Recommendation 19: Electronic transmission of votes from overseas

That the Local Electoral Act 2001 be amended to allow electronic transmission of special votes to and from voters who will be overseas during the election period.

[13] Regulation 47B, Electoral Regulations 1996.

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